

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

RITA GARZA,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner,
Social Security Administration,

Defendant.

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Civil Action No. SA-08-CV-789-XR

ORDER ON MOTION TO EXTEND DEADLINE

On this day, the Court considered Plaintiff's motion for the Court to extend the deadline within which Plaintiff may petition the Court for attorney fees pursuant to 42 U.S.C. § 406(b). (Docket Entry No. 31) This motion is unopposed. Having considered the motion, it is GRANTED.

On March 11, 2010, this Court declined to adopt the Magistrate Judge's Memorandum & Recommendation and remanded the present case to the Commissioner of the Social Security Administration for additional administrative proceedings. A favorable judgment to a claimant may seek attorney fees not in excess of twenty-five percent of the total of the past-due benefits to which the claimant is entitled. 42 U.S.C. § 406(b)(1)(A). Plaintiff cites Rule 54(d)(2) of the Federal Rules of Civil Procedure, which requires a motion for attorney fees to be filed no later than 14 days after entry of judgment. FED. R. CIV. P. 54 (d)(2); *see also* L.R. CV-7(i) (W.D. Tex.) (establishing deadline and standards for filing a motion for attorney fees in the Western District of Texas). Even though section 406(b) does not set a deadline for requesting fees, the fourteen-day deadline established in Rule 54(d) applies. *Pierce v. Barnhart*, 440 F.3d 657, 663 (5th Cir. 2006).

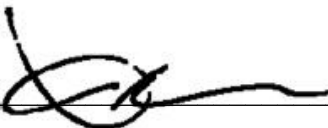
Plaintiff has yet to secure the requisite administrative award by which she could base a

motion for attorney fees in accordance with section 406(b). Therefore, she requests that the Court extend the deadline by which a motion for attorney fees must be filed. *See* FED. R. CIV. P. 54(d)(2) (allowing court to set deadline for party to move for attorney fees); *Pierce*, 440 F.3d at 664 (interpreting district court's order allowing the movant to refile a motion for attorney fees pursuant to section 406(b) as not imposing a deadline).

It is therefore ORDERED that the time within which the Plaintiff may petition for attorney fees pursuant to 42 U.S.C. §406(b) is hereby extended until after the resolution of Plaintiff Garza's disability claim before the Social Security Administration, including calculation of retroactive benefits due to her and determination of any attorney fee payable for representation in the administrative proceedings.

It is so ORDERED.

SIGNED this 23rd day of March, 2010.

A handwritten signature in black ink, appearing to read 'Xavier Rodriguez', is written over a horizontal line.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE